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6
7 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

8 ALLIANCE FOR THE WILD
ROCKIES,

9
10 Plaintiff,

vs.

11 JIM PENA, in his official capacity as
Regional Forester of Region Six U.S.
12 Forest Service, UNITED STATES
FOREST SERVICE, an agency of the
13 United States, and RODNEY
SMOLDON, in his official capacity as
14 Supervisor of the Colville National
Forest,

15 Defendants.
16

Case No. 2:16-cv-00294-RMP

STATEMENT OF MATERIAL
FACTS IN SUPPORT OF
DEFENDANTS' CROSS-MOTION
FOR SUMMARY JUDGMENT

17 Federal Defendants, by and through their counsel of record, Joseph H.
18 Harrington, United States Attorney for the Eastern District of Washington, and the
19 undersigned Assistant U.S. Attorneys, pursuant to the Court's Scheduling Order dated
20 January 17, 2018 (ECF No. 99) and Local Rule 56.1, hereby submits their Statement
21 of Material Facts in support of their cross-motion for summary judgment and in
22 opposition to Plaintiff's motion for summary judgment.
23

24 1. The Forest Service worked closely with a coalition of community
25 leaders, timber industry, local government, and environmental groups such as The
26 Lands Council, Conservation Northwest, and The Nature Conservancy to design the
27 North Fork Mill Creek A to Z Project ("North Fork Project" or "Project") on the
28 Colville National Forest. AR 120875-79.

DEFENDANTS' STATEMENT OF MATERIAL FACTS - 1

1 2. The Forest Service used its stewardship contracting authority to design
2 and offer this forest restoration project, funded through commercial timber harvesting
3 and supporting rural community needs. *See* Section 347 of the Omnibus Consolidated
4 Appropriations Act of FY 1999, as amended by Sec. 323 of P.L. 108-7.

5 3. On March 20, 2013, the Forest Service published its Presolicitation
6 Notice advertising and seeking bidders for the North Fork Project. AR 124203-207.

7 4. On December 5, 2013, Mark Teply of Cramer Fish Sciences provided a
8 progress report to Mike North of the Forest Service and requested resource data. AR
9 027268.

10 5. The Forest Service, on February 7, 2014, as part of its NEPA scoping,
11 invited comments from the public on the North Fork proposal, and identified the
12 Purpose and Need for the Project; the existing conditions; the desired future
13 conditions; and how the project would help implement the Colville Forest Plan. AR
14 063275-063293.

15 6. On February 27, 2014, Mark Teply sent to Mike North a progress report
16 showing the status of the North Fork EA to date. AR 063452; AR 063450-063451.

17 7. On March 13, 2014, Cramer sent to Mike North a progress report
18 showing the status of the North Fork EA to date. AR 063541-062543.

19 8. On March 27, 2014, Cramer sent to Mike North a progress report
20 showing the status of the North Fork EA to date. AR 063583-063585.

21 9. On April 10, 2014, Cramer sent to Mike North a progress report showing
22 the status of the North Fork EA to date. AR 063788-063790.

23 10. On April 24, 2014, Cramer sent to Mike North a progress report
24 showing the status of the North Fork EA to date. AR 064466-064468.

25 11. On May 8, 2014, Cramer sent to Mike North a progress report showing
26 the status of the North Fork EA to date. AR 064817-064821.

1 12. On May 22, 2014, Cramer sent to Mike North a progress report showing
2 the status of the North Fork EA to date. AR 064855-064857.

3 13. On June 5, 2014, Cramer sent to Mike North a progress report showing
4 the status of the North Fork EA to date. AR 065192-065194.

5 14. On June 19, 2014, Cramer sent to Mike North a progress report showing
6 the status of the North Fork EA to date. AR 065669-065671.

7 15. On July 1, 2014, Cramer sent to Mike North a progress report showing
8 the status of the North Fork EA to date. AR 065923-065925.

9 16. On July 10, 2014, Mark Teply of Cramer sent the latest summary of
10 comments received from the public back to the Forest Service to review. AR 065993-
11 066032.

12 17. Also on July 10, 2014, Cramer sent an email to Mike North of the
13 Forest Service with the revised key issues and alternatives developed in response to
14 direction given by Laura Jo [West] and Rodney [Smoldon]. AR 065986-065992.

15 18. On July 20, 2014, Cramer sent to Mike North a progress report showing
16 the status of the North Fork EA to date. AR 066062-066065.

17 19. On August 14, 2014, Cramer sent to Mike North a progress report
18 showing the status of the North Fork EA to date. AR 066601-066603.

19 20. On August 28, 2014, Cramer sent to Mike North a progress report
20 showing the status of the North Fork EA to date. AR 066728-066730.

21 21. On September 11, 2014, Cramer sent to Mike North a progress report
22 showing the status of the North Fork EA to date. AR 066962-066965.

23 22. On September 18, 2014, then Forest Supervisor Laura Jo West wrote to
24 Cramer and approved moving forward in the process after her review of the scoping
25 comments and Key Issues and Alternatives. AR 066990.

26 23. On September 25, 2014, Cramer sent to Mike North a progress report
27 showing the status of the North Fork EA to date. AR 067046-067048.

1 24. On October 9, 2014, Cramer sent to Mike North a progress report
2 showing the status of the North Fork EA to date. AR 067114-067115.

3 25. On October 23, 2014, Cramer sent to Mike North a progress report
4 showing the status of the North Fork EA to date. AR 067226-067227.

5 26. On October 24, 2014, Mike North sent an email to Mark Teply
6 providing comments with regard to proposed road work. AR 067248-067254.

7 27. On October 29, 2014, Cramer wrote an email to Mike North of the
8 Forest Service showing how Cramer had responded to the Forest Service comments
9 regarding the range of alternatives. AR 067287-067295.

10 28. On October 29, 2014, Mark Teply sent an email to Mike North seeking
11 review of how road activities would be presented in the alternative descriptions. AR
12 067296-067297.

13 29. On October 29, 2014, Mark Teply sent an email to Mike North
14 responding to comments by the Forest Service regarding description of road activities
15 in the alternative descriptions. AR 067298.

16 30. On October 30, 2014, Mark Teply sent an email to the Cramer IDT
17 advising the members of the final Key Issues and Alternatives Statement which reflect
18 concerns raised by the Forest Service. AR 067299-067308.

19 31. On November 4, 2014, Cramer sent an email to Mike North forwarding
20 a draft of Chapter 1 of the EA for the Forest Service's review. AR 067353-067376.

21 32. On November 6, 2014, Cramer sent to Mike North a progress report
22 showing the status of the North Fork EA to date. AR 067386-067387.

23 33. On November 6, 2014, Cramer sent an email to Mike North forwarding
24 a draft of the Soils Report and Appendices for Forest Service Review. AR 067388-
25 067447.

1 34. On November 7, 2014, Mark Teply sent an email to the Cramer
2 interdisciplinary team (IDT) members on progress of the project and commenting on
3 the Forest Service review of resource reports. AR 067449-067450.

4 35. On November 14, 2014, Cramer sent to Mike North of the Forest
5 Service a draft of Chapter 1 of the North Fork EA (Purpose and Need) and sought
6 comments on that draft. AR 067385.

7 36. On November 17, 2014, Cramer sent an email to Mike North
8 forwarding a draft of the Vegetation Specialist Report for Forest Service Review. AR
9 067454-067512.

10 37. On November 19, 2014, Cramer sent an email to Mike North
11 forwarding a draft of the Fish Specialist Report for Forest Service Review. AR
12 067514-067603.

13 38. On November 20, 2014, Cramer sent to Mike North a progress report
14 showing the status of the North Fork EA to date. AR 067604-067605.

15 39. On November 21, 2014, Cramer sent an email to Mike North
16 forwarding a draft of the Cultural Specialist Report for Forest Service Review. AR
17 067608-067636.

18 40. On November 21, 2014, Cramer sent an email to Mike North
19 forwarding a draft of the Recreation and Visual Resources Specialist Report for Forest
20 Service Review. AR 067637-067685.

21 41. On November 28, 2014, Cramer sent to the Forest Service a draft of
22 Chapter 2 of the North Fork EA (Proposed Action and Alternatives) and sought
23 comments on that draft. AR 067728.

24 42. The Forest Service then reviewed Chapter 2 and Cramer revised
25 Chapter 2 based on the Forest Service's comments. AR 068052.

1 43. On December 2, 2014, Cramer sent an email to Mike North forwarding
2 a draft of the Hydrology Specialist Report for Forest Service Review. AR 067734-
3 067810.

4 44. On December 4, 2014, Cramer sent to Mike North a progress report
5 showing the status of the North Fork EA to date. AR 067813-067814.

6 45. On December 18, 2014, Mark Teply sent an email to Cramer IDT
7 members regarding the revised Chapter 2 incorporating comments made by the Forest
8 Service. AR 067875.

9 46. On December 31, 2014, Cramer sent an email to Mike North forwarding
10 a draft of the Wildlife Specialist Report for Forest Service Review. AR 068053-
11 068154.

12 47. On January 1, 2015, Cramer sent to Mike North a draft of the
13 Transportation Specialist Report specifically seeking Forest Service review. AR
14 068784-068785.

15 48. On January 15, 2015, Cramer sent to Mike North a draft of the
16 Transportation Specialist Report specifically seeking Forest Service review. AR
17 070614-070709.

18 49. On January 16, 2015, Cramer sent to Mike North a progress report
19 showing the status of the North Fork EA to date. AR 070712-070713.

20 50. On January 18, 2015, Cramer sent an email to Mike North forwarding a
21 draft of the Silviculture/Fire Specialist Report for Forest Service Review. AR
22 070715-070790.

23 51. On January 20, 2015, Mark Teply of Cramer sent an email to the
24 Cramer IDT regarding the status of the Forest Service's review of numerous sections
25 of the draft North Fork EA. AR 070791-070935.

1 52. On January 20, 2015, Cramer sent an email to Mike North indicating
2 how the Forest Service's comments would be incorporated into the North Fork EA.
3 AR 070936.

4 53. On January 23, 2015, Mark Teply sent an email to several members of
5 the Cramer IDT indicating how it was going to incorporate the Forest Service's
6 comments on "other project costs." AR 071142-071147.

7 54. On January 29, 2015, Cramer sent to Mike North a progress report
8 showing the status of the North Fork EA to date. AR 071148-071149.

9 55. On January 31, 2015, Cramer sent an email to Mike North forwarding a
10 revision of the Cultural Specialist Report for Forest Service Review. AR 071154-
11 071180.

12 56. On January 31, 2015, Cramer sent an email to Mike North forwarding a
13 draft of the entire North Fork EA with revisions as requested by the Forest Service.
14 AR 071181-071333.

15 57. On January 31, 2015, Cramer sent numerous emails to Mike North
16 forwarding revised versions of the following specialist reports: Fisheries, Hydrology,
17 Logging/Project Economics, Recreation/Visuals, Silviculture/Fire, Soils,
18 Transportation, Vegetation, and Wildlife. AR 071334-072782.

19 58. On February 12, 2015, Cramer sent to Mike North a progress report
20 showing the status of the North Fork EA to date. AR 072959-072960.

21 59. On February 20, 2015, Cramer sent an email to Mike North forwarding
22 a draft public notice for Forest Service review. AR 072963-072965.

23 60. On February 25, 2015, Mike North sent an email to Cramer forwarding
24 direction and clarification on the North Fork Project. AR 073019-073021.

25 61. On February 26, 2015, Cramer sent to Mike North a progress report
26 showing the status of the North Fork EA to date. AR 073057-073058.

1 62. On March 4, 2015, Mike North sent an email to Mark Teply forwarding
2 a letter from the Colville Forest Supervisor documenting the Forest Services' review
3 of the North Fork EA and approving release of the EA to the public. AR 073216-
4 073217.

5 63. On March 11, 2015, the Statesman-Examiner published a Notice of
6 Opportunity to Comment on the draft North Fork Project EA, identifying the
7 Responsible Official as Forest Supervisor Laura Jo West and referring interested
8 public to the Colville National Forest website for more information. AR 073703-
9 073705.

10 64. On March 12, 2015, Three Rivers District Ranger Rodney Smoldon sent
11 a letter to the public soliciting comments on the North Fork Mill Creek Project.
12 AR073726-073734.

13 65. On March 12, 2015, Cramer sent to Mike North a progress report
14 showing the status of the North Fork EA to date. AR 073724-073925.

15 66. On March 26, 2015, Mike North sent an email to Rodney Smoldon
16 forwarding the finalized Public Participation Plan that incorporated Rodney
17 Smoldon's comments. AR 074209-074217.

18 67. On April 10, 2015, Mark Teply sent an email to Mike North forwarding
19 a compilation of public comments with a request to meet with the Forest Service
20 regarding the comments. AR 076391-076427.

21 68. On April 12, 2015, Cramer sent to Mike North a progress report
22 showing the status of the North Fork EA to date. AR 076448-076450.

23 69. On April 16, 2015, Mark Teply sent an email to members of the Cramer
24 IDT indicating that he met with the Forest Service and got concurrence from the
25 Forest Service on a strategy to addressing the public's comments on the draft North
26 Fork EA. AR 076627.

1 70. On April 21, 2015, Mark Teply sent an email chain to Mike North and
2 others with the Forest Service indicating Cramer had used a climate change analysis
3 that the Forest Service had previously recommended. AR 077091-077093.

4 71. On April 23, 2015, Cramer sent to Mike North a progress report
5 showing the status of the North Fork EA to date. AR 078270-078272.

6 72. On May 1, 2015, Cramer sent an email to Katherine Sanchez Meador of
7 the Forest Service indicating it was addressing the Forest Service's comments on the
8 cumulative effects analysis. AR 080962-081010. Also attached to that email are the
9 slides of a power point presentation that Ms. Meador sent to assist Cramer in its
10 cumulative effects analysis. *Id.*

11 73. On May 7, 2015, Cramer sent to Mike North a progress report showing
12 the status of the North Fork EA to date. AR 081674-081675.

13 74. On May 8, 2015, Cramer sent to Rodney Smoldon a progress report
14 showing the status of the North Fork EA to date. AR 081738-081740.

15 75. On May 21, 2015, Cramer sent to Mike North a progress report showing
16 the status of the North Fork EA to date. AR 082451-082452.

17 76. On May 22, 2015, Mark Teply send an email to Mike North forwarding
18 a revised Wildlife Specialist Report as requested. AR 082454-082552.

19 77. On May 26, 2015, Cramer sent the alternatives comparison table to the
20 Forest Service for review. AR 074208.

21 78. On June 4, 2015, Cramer sent to Mike North a progress report showing
22 the status of the North Fork EA to date. AR 087142-087143.

23 79. On July 10, 2015, Cramer sent an email to Rodney Smoldon and others
24 at the Forest Service forwarding the revised final North Fork EA. AR 087609-
25 087839.

1 80. On July 13, 2015, the Forest Service released the Draft Decision Notice
2 and Finding of No Significant Impact for the North Fork Project. AR 087867-
3 087895; AR 088101-088114.

4 81. On October 16, 2015, Forest Supervisor Rodney Smoldon decided to
5 withdraw the draft DN/FONSI for the North Fork Project. AR 090572; AR 090573-
6 090573.

7 82. On November 22, 2015, Cramer sent an email to Mike North with a
8 draft portion of the cumulative effects analysis and specifically seeking feedback from
9 the Forest Service. AR 091008-091010.

10 83. On December 17, 2015, Cramer sought direction from Rodney Smoldon
11 regarding additional information about roads and treatment units that could be
12 included in the EA and seeking input from the Forest Service on those topics. AR
13 095115.

14 84. On December 31, 2015, Cramer sent an email to Mike North forwarding
15 revisions to Chapter 3 of the North Fork EA (Environmental Consequences) and
16 indicating it would incorporate additional comments by Katherine Sanchez Meador
17 (the Forest Service NEPA Coordinator). AR095117-095118.

18 85. Also attached to that email is another email indicating Cramer would
19 make final edits to Chapters 1 and 2 of the EA after it received additional comments
20 from the Forest Service. *Id.*

21 86. On January 27, 2016, the Colville National Forest opened the objection
22 period on the North Fork Mill Creek DN/FONSI. AR 099220-099232.

23 87. On February 3, 2016, the Colville National Forest cancelled the
24 objection period for the North Fork DN/FONSI and indicated it would reinstate the
25 objection period in the future. AR 099847-099859.

26 88. On February 17, 2016, the Colville National Forest again opened the
27 objection period on the North Fork Mill Creek DN/FONSI. AR 104709-104712.

1 89. On June 1, 2016, the Forest Service's Regional Office provided
2 responses to AWR's objections to the draft DN/FONSI. AR 124271-124339.

3 90. On June 13, 2016, Colville Forest Supervisor Rodney Smoldon signed
4 the final DN/FONSI for the North Fork Mill Creek Project. AR 123033-123066.

5 91. In AWR's objections to the North Fork Project (AR 090390-562 and
6 AR 120654-792), Plaintiff cited to several research papers, including Ruggiero et. al.
7 (2014) and Schwartz et. al. (2013). True and correct copies of those papers are
8 attached as they do not appear in the Administrative Record although they are referred
9 to in documents in the Administrative Record.

10 Dated: May 18, 2018.

11
12 JOSEPH H. HARRINGTON
 United States Attorney

13
14 *s/Rudy J. Verschoor*

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Brian A. Ertz: brian@ertzlaw.org

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And to the following non CM/ECF participants: N/A

s/Rudy J. Verschoor
RUDY J. VERSCHOOR
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